

**STATE REGISTER NOTICE OF PROPOSED REGULATION
PROPOSED AMENDMENT OF R.61-69, CLASSIFIED WATERS**

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Section 48-1-10 et seq.

R.61-69, Classified Waters

Preamble:

The Department proposes amendment of R.61-69 to reclassify those waters located within the boundary of the Congaree National Park to Outstanding Resource Waters (ORWs) and a portion of Cedar Creek located within the boundary of the park as an Outstanding National Resource Water (ONRW). Congaree National Park protects the largest and last significant tract of old-growth bottomland hardwood forest in the United States and has been designated as an International Biosphere Reserve, a Globally Important Bird Area, a National Natural Landmark, a Congressionally Designated Wilderness Area, and nominated as a Wetlands of International Importance. The waters within the park provide for and support this valuable floodplain forest ecosystem. The proposed amendment will be submitted to the General Assembly for review.

The Notice of Drafting for this proposed amendment was published in the *State Register* on August 26, 2005.

Discussion of Revisions:

Amend the language contained in R.61-69 to reclassify specific waters located within the boundary of the Congaree National Park to Outstanding Resource Waters (ORWs) and a portion of Cedar Creek located within the boundary of the park as an Outstanding National Resource Water (ONRW) in order to protect and maintain these exceptional water resources. The Department will maintain the Freshwater (FW) classification to those portions of waters outside the park boundary that connect at the boundary of the park with those waters inside the park and also maintain the Congaree River, which borders the park, as FW. The Department will add the Outstanding National Resource Water to the abbreviations table at the beginning of the regulation.

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invites members of the public and regulated community to attend a staff-conducted informational forum to be held on January 4, 2006 at 10:00 a.m. in Peeples Auditorium, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The purpose of the forum is to answer questions, clarify issues, and receive comments from interested parties on the proposed amendment to the regulation. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street Entrance and register at the front desk. Comments received shall be considered by staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for the Board public hearing scheduled for February 9, 2006 as noticed below.

Interested parties are also provided an opportunity to submit written comments by writing to Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, Fax number (803) 898- 4140. To be considered, written comments submitted must be received no later than 3:00 p.m. on January 4, 2006. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the

public hearing as noticed below.

Copies of the text of the proposed amendment to the regulation for public notice and comment may be obtained by contacting Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-4250, Fax number (803) 898-4140, or from the Department's website <http://www.scdhec.net/water/index.html>.

Notice of Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-110 and 1-23-111:

Interested members of the public and regulated community are invited to make oral and written comments on the proposed amendment to the regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on February 9, 2006. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in order presented. The order of presentation for public hearings will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street Entrance and register at the front desk.

Copies of the final proposed regulation for public hearing may be obtained by contacting Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-4250, Fax number (803) 898-4140, or from the Department's website at <http://www.scdhec.net/water/index.html/>.

Preliminary Fiscal Impact Statement:

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

The statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: Amendment of Regulation 61-69, Classified Waters.

Purpose: Proposed amendment of R.61-69 will reclassify specific waters located within the boundary of Congaree National Park to Outstanding Resource Waters (ORWs) and a portion of Cedar Creek located within the boundary of the Park to Outstanding National Resource Water (ONRW) of the State.

Legal Authority: S.C. Code Sections 48-1-40, 48-1-60, and 48-1-80, implementing the Clean Water Act (CWA).

Plan for Implementation: The proposed amendment would be incorporated within R.61-69 upon approval of the General Assembly and publication in the *State Register*. The proposed amendment will be implemented in the same manner in which the present regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION

BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

The Congaree National Park is unique in South Carolina as its only national park. The Congaree National Park protects the largest and last significant tract of old-growth bottomland hardwood forest in the United States and has been designated as an International Biosphere Reserve, a Globally Important Bird Area, a National Natural Landmark, a Congressionally Designated Wilderness Area, and nominated as a Wetlands of International Importance. The waters within the park provide for and sustain this valuable floodplain forest ecosystem. The maintenance of the existing water quality and its future protection are essential and this reclassification to ORW and ONRW is appropriate to achieve that goal.

DETERMINATION OF COSTS AND BENEFITS: Existing staff and resources will be utilized to implement this amendment to the regulation. No additional cost will be incurred by the State if the revisions are implemented and, therefore, no additional State funding is being requested.

In reviewing the potential for significant economic impact of the proposed amendment, the Department evaluated situations in which costs would most likely be incurred by the regulated community. Since no existing point source discharges are currently located within the area of the proposed reclassifications, the only effect would be to ensure that existing upstream discharges would protect the downstream uses. The Department found that the overall impact to the State's political subdivisions or the regulated community as a whole was not likely to be significant in that the existing water quality standards would ensure protection of the downstream uses and the existing permitted conditions should still be applicable.

UNCERTAINTIES OF ESTIMATES: Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Implementation of this amendment will not compromise the protection of the environment or the health and safety of the citizenry of the State. The amendment will promote and protect a significant water resource of the State and ensure its protection for future generations by restricting any future point source discharges in the waters reclassified to ORW and additionally limit nonpoint source activities in that portion of Cedar Creek reclassified to ONRW, thereby ensuring the maintenance of the existing water quality that now provides for the exceptional recreational and environmental resources of the Congaree National Park.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: Failure by the Department to reclassify these waters could ultimately lead to future additional anthropogenic sources of pollution within these waters and a general degrading of the current water quality conditions. It is anticipated that the additional layers of protection provided by the new classification will prevent discharges and any potential adverse contamination of these waters of the State.

Statement of Rationale:

The statement of rationale was determined by staff analysis pursuant to S.C. Code Section 1-23-110(A)(3)(h).

The waters included in this proposed reclassification provide and sustain a nationally significant forest refuge that contains the last significant tract of old-growth bottomland hardwood in the United States and exceptional woodland wildlife. This is the only National Park in the State of South Carolina and the waters that support this unique and valuable resource are also extremely valuable. In accordance with the goals of the CWA and the South Carolina Pollution Control Act (PCA), it is incumbent upon the State to protect its valuable water resources for current and future generations. The Department has the duty to find and preserve the State's exceptional water resources and this amendment will ensure that these waters are protected and maintained.

Text of Proposed Amendment for Public Notice and Comment:

At R.61-69.E., in the abbreviations table, add the following text to read.

Class Abbreviations Used in Regulation 61-69

Outstanding National Resource Waters ONRW

In R.61-69, add the following text to read.

Waterbody Name	Counties	Class	Waterbody Description and (Site Specific Standard)
BIG LAKE	Rlnd	ORW	The entire lake within the boundary of the Congaree National Park
DRY BRANCH	Rlnd	FW	That portion of the stream outside the boundary of the Congaree National Park
DRY BRANCH	Rlnd	ORW	That portion of the stream beginning at the boundary of the Congaree National Park to Weston Lake
MCKENZIE CREEK	Rlnd	FW	That portion of the stream outside the boundary of the Congaree National Park
MCKENZIE CREEK	Rlnd	ORW	That portion of the stream beginning at the boundary of the Congaree National Park to its confluence with Toms Creek
OLD DEAD RIVER	Rlnd	ORW	The entire stream within the boundary of the Congaree National Park
RUNNING LAKE CREEK	Rlnd	FW	That portion of the stream outside the boundary of the Congaree National Park
RUNNING LAKE CREEK	Rlnd	ORW	That portion of the stream beginning at the boundary of the Congaree National Park to its confluence with Toms Creek
TOMS CREEK	Rlnd	FW	That portion of the stream outside the boundary of the Congaree National Park
TOMS CREEK	Rlnd	ORW	That portion of the stream beginning at the boundary of the Congaree National Park to its confluence with Cedar Creek
UNNAMED CREEKS, PONDS, OR LAKES	Rlnd	FW	Any portions tributary to waters unnamed or named located within the boundary of the Congaree National Park to the boundary of the Congaree National Park
UNNAMED CREEKS, PONDS, OR LAKES	Rlnd	ORW	All portions of waters and waters located wholly within the boundary of the Congaree National Park
WESTON LAKE	Rlnd	ORW	The entire lake within the boundary of the Congaree National Park
WISE LAKE	Rlnd	ORW	The entire lake within the boundary of the Congaree National Park

In R.61-69, amend the following text to read.

Waterbody Name	Counties	Class	Waterbody Description and (Site Specific Standard)
CEDAR CREEK	Rlnd	FW	That portion of the stream outside the boundary of the Congaree National Park
CEDAR CREEK	Rlnd	ORW	That portion of the stream beginning at the boundary of the Congaree National Park to Wise Lake
CEDAR CREEK	Rlnd	ONRW	That portion of the stream beginning at Wise Lake to its confluence with the Congaree River